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Paper No. 11

MIKOHN GAMING CORPORATION
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In re Application of: O. Vancura et al.
Application No. 09/287,556
Filed: April 6, 1999
For: REPLACEMENT BACCARAT
TIE WAGER

**DECISION ON PETITION UNDER
37 CFR 1.181 TO WITHDRAW
HOLDING OF ABANDONMENT**

This is a decision on the petition, filed May 11, 2001, requesting the holding of abandonment be withdrawn in the above-identified application. Due to the content of the petition it will be considered under 37 C.F.R. §§1.10(e) and 1.181.

This application was held abandoned for failure to timely file a proper reply to the Office action mailed October 11, 2000 (Paper No. 8). A Notice of Abandonment was mailed May 7, 2001 (Paper No. 9).

Petitioner states that a response was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard and a copy of an "Express Mail" receipt. Petitioner has also submitted a copy of the response.

Initially, M.P.E.P. § 503 states that "[a] post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." However, the copy of the postcard bears no date stamp.

37 C.F.R. §1.10 states in relevant part:

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Applicant has filed the petition promptly and the number of the "Express Mail" label was placed on the reply provided with the petition. The "Express Mail" receipt bears a "Date In" of January 11, 2001 and is postmarked the same day.

Applicant's request however is deficient in that it does not include a statement as per 37 C.F.R. §1.10(e)(4) indicating that the copies of the reply, the "Express Mail" receipt and any official notation entered by the USPS are true copies of the originally mailed reply, "Express Mail" receipt and official notation entered by the USPS.

Accordingly, the petition is **DENIED**. This application remains abandoned. If the petitioner desires further review of this decision, applicant should file a Request for Reconsideration within TWO MONTHS of the mailing date of this decision. Alternatively, applicant may wish to consider filing a petition under 37 C.F.R. §1.137 to revive the application.


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& Electronic Commerce